MID-AMERICA REFINING CO.

IBLA 81-144 Decided December 31, 1981

Appeal from decision of the Chief, Conservation Division, Geological Survey, limiting maximum allocation for purchase of OCS royalty oil. GS-2(a)--O&G.

Affirmed.

1. Oil and Gas Leases: Contracts for Sale of Royalty Oil or Gas--Outer Continental Shelf Lands Act: Generally

Limitation of a small refiner's allocation in a sale of Outer Continental Shelf royalty oil under sec. 27(b)(2) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1353(b)(2) (Supp. II 1978), to excess refinery capacity, as determined by subtracting the volume of oil actually refined in a representative period from the applicant's refinery capacity, is both reasonable and consistent with the statutory authority.

APPEARANCES: Frank P. Saponaro, Jr., Esq., Washington, D.C., for appellant; L. Poe Leggette, Esq., United States Department of the Interior, Washington, D.C., for Geological Survey.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Mid-America Refining Company (Mid-America) appeals from a decision of the Chief, Conservation Division, Geological Survey (Survey) dated September 30, 1980. The decision affirmed limitation of Mid-America's allocation of Federal offshore royalty oil awarded in connection with a sale to its "excess refining capacity" as determined by Survey. The royalty oil sale was held pursuant to section 27(b) of the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. § 1353(b) (Supp. II 1978).

By Federal Register notice published January 14, 1980, 45 FR 2832, the Secretary of the Interior, after consultation with the Secretary of Energy, announced that he had determined that small refiners did not have access to adequate supplies of oil at equitable prices. In an effort to alleviate this situation, the Secretary of the Interior made available for purchase by small refiners approximately 91,000 barrels of royalty oil per day pursuant to section 27(b)(2), OCSLA, 43 U.S.C. § 1353(b)(2) (Supp. II 1978). Pursuant to the notice, Mid-America submitted an application to purchase royalty oil. On April 17, 1980, at the allocation meeting for offshore royalty oil in Metairie, Louisiana, appellant was informed by Survey that the maximum allocation it could receive was 192 barrels of oil per day.

The Federal Register notice announcing the sale required small refiners wishing to purchase Outer Continental Shelf (OCS) royalty oil to file an application specifying, among other things:

> B. (1) Capacity of each refinery as certified by the ERA [Economic Regulatory Administration].
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> (2) Crude oil currently available from production or by purchase in the open market, broken down by source, amount, and type or grade into the following categories:
>
> (a) From applicant's own and controlled production. * * *
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> (b) By purchases under firm contracts running 6 months or more.
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> (c) From day-to-day spot purchases or other arrangements.
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> (d) From crude oil imported by allocation under the mandatory imports program, * * *.
>
> (e) By purchase under all existing Federal royalty oil contracts both onshore and offshore and the expiration date of each such contract.
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> C. (1) Minimum amount and grade of additional crude oil needed to meet existing and future commitments or the needs of existing certified operating capacity;
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> * * * * * * *
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> D. A tabulation for the last 12 months of operation, of the amount and grade of crude oil refined each month and kind and amount of principal finished products.

45 FR 2833 (Jan. 14, 1980). The sale notice acknowledged that the anticipated volume of demand for royalty oil would exceed the supply available for sale. Further, applicants were advised by the notice that allocation of royalty oil to each qualified refiner would be based on several considerations, including the following:

> 1. Each refiner would receive an equal amount as its base allocation volume; this base is determined by the amount of royalty oil available and the number of eligible refiners.
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> 2. No volume of royalty oil received would exceed the base allocation volume; however, the base volume may be increased by the availability of oil not allocated to eligible first-preference refiners.
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> 3. The sum of the volumes of OCS and onshore royalty oil acquired or being acquired by a refiner will not exceed 60 percent of the combined refinery capacity of that refiner.
>
> 4. The amount allocated to a refiner will not exceed the maximum stated need.

45 FR 2833 (Jan. 14, 1980).

The basis for the rejection of Mid-America's request for a full base allocation was a determination by Survey, based on data provided by appellant with its application, that the average amount of oil processed through appellant's refinery ("runs to stills") on a daily basis was only 192 barrels per day less than the capacity of appellant's refinery. The amount of refinery capacity in barrels per day unused after subtracting average "runs to stills" per day constitutes the "excess refining capacity." This is the volume of additional oil required to keep a refinery operating at capacity by which Survey limited appellant's allocation. It appears from the record that the average "runs to stills" per day was calculated by taking the total volume of oil refined for the months of November and December of 1979 and January of 1980, discarding the figure that deviated most from the other two (in the case of appellant, January of 1980), and dividing the number of gallons refined in the remaining 2 months by the number of days therein.

Counsel for appellant contends in the statement of reasons for appeal that the limitation of the amount of the royalty oil sale contract to "excess refining capacity" as determined by subtracting the volume of oil actually processed in a 3-month period from the certified refinery capacity was invalid as this restriction was not published with 30 days notice as required by statute. Further, appellant contends this restriction on the amount of the royalty oil sale was contrary to the terms of the statute because it does not take into account the price paid for the oil. Appellant avers that although oil is available to anyone at a high enough price, the statutory relief of OCS royalty oil sales is predicated on the lack of access by small refiners to adequate supplies of oil at equitable prices. Counsel alleges that a small refinery which paid more for oil to keep its refinery operating should not be prejudiced thereby through reduced access to OCS royalty oil. Finally, appellant alleges that use of the 3-month period for computing the amount of oil refined in order to determine excess refinery capacity is arbitrary and unreasonable as there is no reason to expect such a short term to give a representative figure.

An explanation of the standards applied by Survey in determining the size of Mid-America's OCS royalty oil allocation is provided in a memorandum dated June 19, 1980, from the Deputy Division Chief, Offshore Minerals Regulation to the Chief, Branch of Onshore Rules and Procedures. The memorandum states in part:

> The Geological Survey had three criteria which were used to compute the maximum allocation of crude oil a refiner could receive. The maximum allocation of crude oil to a single refiner was based upon the lesser of 1) the refiner's available excess refining capacity, 2) 60 percent of the refiner's refining capacity, or 3) the volume of oil requested by the refiner. The allocations of crude oil to 60 of the refiners that received allocations were limited by the excess capacity determinations relating to each of these refiners. Ten refiners, including Mid-America, received allocations that were less than a full base allocation because the information we had indicated that their excess refining capacity was less than the base allocation volume.
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> We see no inconsistency in the allocation of royalty oil to small refiners on the basis of excess refining capacity and the Secretary's finding that small refiners do not have access to adequate supplies of oil at equitable prices. The Secretary's finding relates to a nationwide situation affecting in general a large number of small refiners. In order to recognize that some small refiners have an adequate supply of oil available, the determination of a refiner's excess refining capacity was viewed as a standard to measure each individual refiner's demonstrated relative need for an equitable share of the available royalty oil. For example, a refiner who is functioning at or near full capacity over a specified representative period of time has demonstrated less of a need for access to

Federal royalty oil than a refiner who is operating substantially below full capacity.

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Our records indicate that Mid-America's runs for the period of July through December, 1979, varied from a low of 80,725 barrels for the month of July to a high of 90,863 barrels for the month of October. The July 1979 refinery runs on a calendar-day basis were 2,604 barrels. That volume, which is the lowest runs per day that Mid-America experienced during that 6-month period, is equal to 93 percent of the runs per day data utilized by the Geological Survey to determine the amount of Mid-America's available excess refining capacity (i.e., the additional volume of oil needed for Mid-America to operate at capacity). Mid-America's August runs were equal to 97 percent of the volume utilized by the Geological Survey; its September runs were equal to 99 percent of that volume; and October runs were equal to 104 percent of that volume. On the other hand, Mid-America's daily runs for January 1980 were 68 percent of the runs per day used by the Geological Survey to determine available excess capacity (i.e., need for more oil). The January 1980 information was the latest available to the Geological Survey at the time it determined allocations. Mid-America's January 1980 refinery runs deviated so widely from the runs of the previous 6 months that they clearly cannot be viewed as representative of a long term need for additional oil.

The allocation of Federal royalty oil to Mid-America was calculated in the same manner as the allocations allotted to each of the other refiners.

[1] Section 27(b)(2) of OCSLA makes a finding by the Secretary of the Interior (after consultation with the Secretary of Energy) that "small refiners do not have access to adequate supplies of oil at equitable prices" a condition precedent to the conduct of an OCS royalty oil sale for eligible small refiners. 43 U.S.C. § 1353(b)(2) (Supp. II 1978). However, the statute does not require consideration of the price paid by an eligible refiner for oil actually processed when determining its allocation of royalty oil. Indeed, the Secretary is granted discretion in the manner of allocation--the Secretary is authorized by section 27(b)(2) to conduct a lottery for the sale of OCS royalty oil or to equitably allocate such oil among the eligible competitors for the purchase of such oil. An allocation based on need as determined by excess refining capacity is neither unreasonable nor contrary to the statutory directive.

The notice of January 14, 1980, announcing the royalty oil sale detailed the information required to be filed in support of an application to purchase. Further, the notice expressly advised that the "amount allocated to a refiner will not exceed the maximum stated need." 45 FR 2833 (Jan. 14, 1980). We cannot conclude that the fact that the notice did not detail the manner in which the "stated need" would be computed constitutes a violation of the statutory mandate of section 27(b)(2) to publish notice of "any limitation in the amount of oil which any participant may be entitled to purchase."

Finally, the record fails to establish that the method used by Survey to determine excess refinery capacity is arbitrary or unreasonable. Rather, the record supports the reasonableness of use of the data from the last 3 months of operations by all applicants as providing both recent and realistic data on the amount of unused refinery capacity. Although other methods might have been used to determine the excess refinery capacity (and thus the need for royalty oil), the record establishes that the method utilized is not arbitrary. See Quitman Refining Co., 57 IBLA 53 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge